(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote), will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CARTWRIGHT, EXECUTOR

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 71-1665. Argued January 16, 1973—Decided May 7, 1973

Shares in mutual funds can be "sold" by the shareholder only back to the fund and only at a set redemption price. Treas. Reg. § 20.2031-8 (b), requiring that such shares be valued for federal estate tax purposes at the current public offering ("asked") price, which is determined by adding a load or sales charge to the net asset value, is clearly inconsistent with the Investment Company Act of 1940, and is therefore invalid. Pp. 5-12.

457 F. 2d 567, affirmed.

WHITE, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, MARSHALL, BLACKMUN, and POWELL, JJ., joined. STEWART, J., filed a dissenting opinion, in which BURGER, C. J., and REHNQUIST, J., joined.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES v. CARTWRIGHT, EXECUTOR

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 71-1665. Argued January 16, 1973—Decided May 7, 1973

Shares in mutual funds can be "sold" by the shareholder only back to the fund and only at a set redemption price. Treas. Reg. § 20.2031-8 (b), requiring that such shares be valued for federal estate tax purposes at the current public offering ("asked") price, which is determined by adding a load or sales charge to the net asset value, is clearly inconsistent with the Investment Company Act of 1940, and is therefore invalid. Pp. 5-12.

457 F. 2d 567, affirmed.

WHITE, J., delivered the opinion of the Court, in which DOUGLAS, BRENNAN, MARSHALL, BLACKMUN, and POWELL, JJ., joined. STEWART, J., filed a dissenting opinion, in which BURGER, C. J., and REHNQUIST, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 71-1665

United States, Petitioner, *v.* Douglas B. Cartwright, as Executor of the Estate of Ethel B. Bennett.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 7, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

The Internal Revenue Code of 1954 requires that, for estate tax purposes, the "value" of all property held by a decedent at the time of death be included in the gross estate. 26 U. S. C. § 2031. By regulation, the Secretary of the Treasury has determined that shares in open-end investment companies or mutual funds are to be valued at their public offering price or "asked" price at the date of death. Treas. Reg. § 20.2031-8 (b) (1963). The question this case presents is whether that determination is reasonable in the context of the market for mutual fund shares.

At the time of her death in 1964, Ethel B. Bennett owned approximately 8,700 shares of three mutual funds that are regulated by the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U. S. C. § 80a-1, *et seq.*[1] The 1940 Act seeks generally to regulate pub-

---

[1] The decedent owned 2,568.422 shares of Investors Mutual, Inc., in her own name, and 2,067.531 shares as trustee for her daughter. The decedent also owned 2,269.376 shares of Investors Stock Fund, Inc., and 1,869.159 shares of Investors Selective Fund, Inc.

For thorough discussions of the operations of open-end investment

licly held companies that are engaged in investing in securities. Open-end investment companies, or mutual funds, "dominate" this industry. 1966 SEC Report, p. 43. Unquestionably, the most unique characteristic of mutual funds is that they are permitted, under the Act, to market their shares continuously to the public, but are required to be prepared to redeem outstanding shares at any time. § 80a-22 (e). The redemption price (or "bid" price) that a shareholder may receive is set by the Act at approximately the fractional value per share of the fund's net assets at the time of redemption. § 80-2 (32). In contrast, the "asked" price, or the price at which the fund initially offers its shares to the public, includes not only the net asset value per share at the time of sale, but also a fixed sales charge or "sales load" assessed by the fund's principal underwriter who acts as an agent in marketing the fund's shares. § 80a-2 (35).[2] Sales loads vary within fixed limits from mutual fund to mutual fund, but all are paid to the funds' underwriters; the charges do not become part of the assets of the fund.[3] The sales loads of the funds held by the

companies, see SEC, Report on Public Policy Implications of Investment Company Growth, H. R. Rep. No. 2337, 89th Cong., 2d Sess. (1966) (hereinafter, 1966 SEC Report); SEC Report of Special Study of Securities Markets, c. XI, Open-End Investment Companies (Mutual Funds), H. R. Doc. No. 95, pt. 4, 88th Cong., 1st Sess. (1963) (hereinafter, 1963 Special Study).

[2] A number of mutual funds are so-called "no-load funds"; in such cases the bid and asked prices are the same. See 1966 SEC Report, pp. 58-59. The underwriter for all three funds involved in this case is Investors Diversified Services, Inc. (IDS), which is not itself an open-end investment company. IDS also serves as the investment manager of the funds, for which it receives separate management fees. See 15 U. S. C. § 80a-15.

[3] The 1963 Special Study (pp. 96-97) explained the trading in mutual fund shares as follows:

"Mutual fund shares are not traded on exchanges or generally in the over-the-counter market, as are other securities, but are

decedent ranged from seven and eight percent to one percent of the fractional net asset value of the funds' shares.

Private trading in mutual fund shares is virtually nonexistent.[4] Thus, at any given time, under the statutory scheme created by the Investment Company Act, shares of any open-end mutual fund with a sales load are being sold at two distinct prices. Initial purchases by the public are made from the fund, at the "asked" price, which includes the load. But shareholders "sell" their shares back to the fund at the statutorily defined redemption or bid price.

---

sold by the fund through a principal underwriter, and redeemed by the fund, at prices which are related to 'net asset value.' The net asset value per share is normally computed twice daily by taking the market value at the time of all portfolio securities, adding the value of other assets and subtracting liabilities, and dividing the result by the number of shares outstanding. Shares of most funds are sold for a price equal to their asset value plus a sales charge or commission, commonly referred to as the 'sales load,' and usually ranging from 7.5 to 8.5 percent of the amount paid, or 8.1 to 9.3 percent of the amount invested. A few funds, however, known as 'no-load' funds, offer their shares for sale at net asset value without a sales charge. Shares of most funds are redeemed or repurchased by the funds at their net asset value, although a few funds charge a small redemption fee. The result of this pricing system, it is apparent, is that the entire cost of selling fund shares is generally borne exclusively by the purchaser of new shares and not by the fund itself. In this respect the offering of mutual fund shares differs from, say the offering of new shares by a closed-end investment company or an additional offering 'at the market' of shares of an exchange-listed security, where at least a portion of the selling cost is borne by the company selling the shares." (Footnote omitted.)

[4] See *Estate of Wells* v. *Commissioner*, 50 T. C. 871, 873 (1968), aff'd *sub nom.* *Ruehlmann* v. *Commissioner*, 418 F. 2d 1302 (CA6 1969), cert. denied, 398 U. S. 950 (1970); 1966 SEC Report, p. 42; and 1963 Special Study, p. 96.

Respondent is the executor of the decedent's estate. On the federal estate tax return, he reported the value of the mutual fund shares held by the decedent at their redemption price, which amounted to about $124,400. The Commissioner assessed a deficiency based upon his valuation of the shares at their public offering or asked price, pursuant to Treas. Reg. § 20.2031-8 (b).[5] Valued on that basis, the shares were worth approximately $133,300. Respondent paid the deficiency of about $3,100, including interest, filed a timely claim for a refund, and, when that claim was denied, commenced a refund action in federal district court on the ground that the valuation based on § 20.2031-8 (b) was unreasonable. The District Court agreed with respondent and held the Regulation invalid. 323 F. Supp. 769. The Court of Appeals affirmed. 457 F. 2d 567. We granted the Government's petition for certiorari, 409 U. S. 840, because of the conflict among the circuits.[6]

---

[5] The regulation reads, in part, as follows:

"(b) *Valuation of shares in an open-end investment company.* (1) The fair market value of a share in an open-end investment company (commonly known as a 'mutual fund') is the public offering price of a share, adjusted for any reduction in price available to the public in acquiring the number of shares being valued. In the absence of an affirmative showing of the public offering price in effect at the time of death, the last public offering price quoted by the company for the date of death, shall be presumed to be the applicable public offering price. . . .

"(2) The provisions of this paragraph shall apply with respect to estates of decedents dying after October 10, 1963."

This regulation was promulgated in 1963, T. D. 6680, 28 Fed. Reg. 10872, after some years of confusion within the Treasury Department and between that Department and the Department of Justice. See the District Court's opinion, 323 F. Supp. 769, 777. A corresponding regulation was adopted for gift tax purposes. Treas. Reg. § 25.2512-6 (b).

[6] In *Estate of Wells* v. *Commissioner*, *supra*, the Tax Court sustained the regulation, with six judges dissenting. That decision

We recognize that this Court is not in the business of administering the tax laws of the Nation. Congress has delegated that task to the Secretary of the Treasury, 26 U. S. C. § 7805 (a), and regulations promulgated under his authority, if found to "implement the congressional mandate in some reasonable manner," must be upheld. *United States* v. *Correll*, 389 U. S. 299, 307 (1967). See *Bingler* v. *Johnson*, 394 U. S. 741, 749–751 (1969); *Commissioner* v. *South Texas Lumber Co.*, 333 U. S. 496, 501 (1948). But that principle is to set the framework for judicial analysis; it does not displace it. We find that the contested regulation is unrealistic and unreasonable and therefore affirm the judgment of the Court of Appeals.

In implementing 26 U. S. C. § 2031, the general principle of the Treasury Regulations is that the value of property is to be determined by its fair market value at the time of the decedent's death. "The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." Treas. Reg. § 20.2031–1 (b). The willing buyer-willing seller test of fair market value is nearly as old as the federal income, estate, and gifts taxes themselves, and is not challenged here.[7] Under this test, it is clear that if the

---

was affirmed by the Sixth Circuit in *Ruehlmann* v. *Commissioner*, 418 F. 2d 1302 (1968), cert. denied, 398 U. S. 950 (1970). The companion gift tax regulation was upheld in *Howell* v. *United States*, 414 F. 2d 45 (CA7 1969). Regulation § 20.2031–8 (b) was held invalid in *Davis* v. *United States*, 460 F. 2d 769 (CA9 1972), aff'ing 306 F. Supp. 949 (CD Cal. 1969). See also *Hicks* v. *United States*, 335 F. Supp. 474 (Colo. 1972), appeal pending, No. 72–1360 (CA10).

[7] See Treas. Reg. 63 Relating to Estate Tax Under the Revenue Act of 1921, Art. 13 (1922 ed.) ("The criterion of such value is the price which a willing buyer will pay to a willing seller for the property in question under the circumstances existing at the date of

decedent had owned ordinary corporate stock listed on an exchange its "value" for estate tax purposes would be the price the estate could have obtained if it had sold the stock on the valuation date, that price being, under Treas. Reg. § 20.2031-2 (b), the mean between the highest and lowest quoted selling prices on that day. Respondent urges that similar treatment be given mutual fund shares and that, accordingly, their value be measured by the redemption price at the date of death, the only price that the estate could hope to obtain if the shares had been sold.

Respondent's argument has the clear ring of common sense to it, but the United States maintains that the redemption price does not reflect the price that a willing buyer would pay, inasmuch as the mutual fund is under a statutory obligation to redeem outstanding shares whenever they are offered. According to the Government, the only market for mutual fund shares that has both willing buyers and willing sellers is the public offering market. Therefore, the price in that market, the asked price, is an appropriate basis for valuation. The central difficulty with this argument is that it unrealistically bifurcates the statutory scheme for the trading in mutual fund shares. To be sure, the fund is under an obligation to redeem its shares at the stated price. 15 U. S. C. § 80a-22 (e). But, at the time of the original purchases, both the fund and the purchasers are aware of that duty and both willingly enter into the sale transactions nonetheless. As Judge Winner correctly observed in *Hicks v. United States, supra,* 335 F. Supp., at 481:

> "Viewing the contract in this light meets every test of the 'willing buyer-willing seller' definition usually applied in the determination of market value. The 'willing buyer' is the fully informed person who

---

the decedent's death . . . ."); Treas. Reg. 105 Relating to the Estate Tax Under the Internal Revenue Code (of 1939), § 81.10 (1942).

agrees to buy the shares, agreeing at that time to sell them to the fund—the only available repurchaser—at the redemption price. The 'willing seller' is the fund which sells the shares at market value plus a load charge, and which agrees to buy the shares back at market less the load charge. That is the market, and it is the only market. It is a market made up of informed buyers and an informed seller, all dealing at arm's length."

In the context of the Investment Company Act, the redemption price may thus be properly viewed only as the final step in a voluntary transaction between a willing buyer and a willing seller. As a matter of statutory law, holders of mutual fund shares cannot obtain the "asked" price from the fund. That price is never paid by the fund; it is used by the fund when selling its shares to the public—and even then the fund receives merely the net asset value per share from the sale, with the sales load being paid directly to the underwriter. In short, the only price that a shareholder may realize and that the fund—the only buyer—will pay is the redemption price. In the teeth of this fact, Regulation 20.2032-8 (b) purports to assign a value to mutual fund shares that the estate could not hope to obtain and that the fund could not offer.

In support of the Regulation, the Government stresses that many types of property are taxed at values above those which could be realized during an actual sale. For example, ordinary corporate stock is valued at its fair market price without taking into account the brokerage commission that a seller must generally pay in order to sell the stock. Respondent does not contend that that approach is inappropriate or that, for example, the value of ordinary stock in an estate should be the market price at the time less anticipated brokerage fees. But § 20.2031-8 (b) operates in an entirely different fashion.

The regulation includes as an element of value the commission cost incurred in the hypothetical *purchase* of the mutual fund shares already held in the decedent's estate. If that principle were carried over to the ordinary stock situation, then a share traded at $100 on the date of death would be valued not at $100, as it now is, but at, say, $108, representing the "value" plus the fee that a person buying the stock on that day would have to pay. It hardly need be said that such a valuation method is at least inconsistent with long-established Treasury practice and would appear at odds with the basic notions of valuation embodied in the Internal Revenue Code.[6] See *Estate of Wells* v. *Commissioner, supra,* 50 T. C., at 880 (Tannenwald, J., dissenting).

Even if it were assumed that the public offering price were somehow relevant to the value of mutual fund shares privately held, there would still be the difficulty that shares so held are, in important respects, similar to ordinary corporate stock held subject to a restrictive agreement (such as a first refusal right at a specified price). With respect to the value of such stock, the Treasury Regulations have provided that the price that may be obtained in the marketplace does not control. Rather, so long as the restriction is a bona fide one, the value of the shares in the hands of the restricted stockholder is determined in accordance with the terms of the restriction. Treas. Reg. § 20.2031-2 (h). Outstanding mutual fund shares are likewise held subject to a restriction, as the Court of Appeals noted. 457 F. 2d, at 571. Those shares may not be "sold" at the public offering price. By statute, they may be "sold" back to the mutual fund

[6] Whatever the situations may be where it is realistic and appropriate under Treas. Reg. § 20.2031-1 (b) (1965) to use a standardized retail price to measure value for estate tax purposes, it is sufficient to note here that, for the reasons given, the valuation of mutual fund shares does not present one of those situations.

only at the redemption price. We see no valid justification for disregarding this reality connected with the ownership of mutual fund shares.

The Government nevertheless argues that Treas. Reg. § 20.2031-8 (b) reasonably values the "bundle of rights" that are transferred with the ownership of the mutual funds shares.[9] For this argument, heavy reliance is placed on this Court's decisions in *Guggenheim* v. *Rasquin*, 312 U. S. 254 (1941); *Powers* v. *Commissioner*, 312 U. S. 259 (1941); *United States* v. *Ryerson*, 312 U. S. 260 (1941), which held that the cash-surrender value of a single-premium life insurance policy did not necessarily represent its only taxable value for federal gift tax purposes.[10] In *Guggenheim*, the lead case, the taxpayer purchased single-premium life insurance policies with an aggregate face value of one million dollars for approximately $852,000 and, shortly thereafter, gave the policies to her children. On the gift tax return, the policies were listed at their cash-surrender value of about $717,000—admittedly the only amount the donor or the donees could receive, if the policies were surrendered. But the Com-

[9] The Government argues that, as a practical matter, an estate would rarely be hurt by valuation of mutual fund shares at the asked price, because Treas. Reg. § 20.2053-3 (d)(2) permits an estate to deduct the difference between the asked and bid prices if the shares are sold to pay certain enumerated expenses. By its terms, however, that regulation applies only if "the sale is *necessary*" to pay those expenses. (Emphasis added.) In any event, the regulation is inapplicable altogether if the shares are transferred in kind to an heir or legatee.

[10] It is no coincidence that the contested regulation was placed in Treas. Reg. § 20.2031-8, which deals with "Valuation of certain life insurance and annuity contracts . . . ." But we agree with Judge Winner:

"The Commissioner cannot cross-breed life insurance and investment trust shares by the single expedient of discussing them in separate paragraphs of a single regulation." *Hicks* v. *United States*, *supra*, 335 F. Supp., at 482.

missioner valued the gift at the cost of the policies, and this Court upheld that valuation: "the owner of a fully paid life insurance policy has more than the mere right to surrender it; he has the right to retain it for its investment virtues and to receive the face amount of the policy upon the insured's death. That these latter rights are deemed by purchasers of insurance to have substantial value is clear from the difference between the cost of a single-premium policy and its immediate or early cash-surrender value . . . ." 312 U. S., at 257. Because the "entire bundle of rights in a single-premium policy" is so difficult to give a realistic value to, the Court deferred to the Commissioner's determination and permitted valuation to be based on cost: "Cost is cogent evidence of value." 312 U. S., at 258. But as the District Court observed, 323 F. Supp., at 773, shares in mutual funds are quite unlike insurance policies, particularly in light of the policyowner's right to receive the full face value of the policy upon the insured's death. Moreover, mutual fund shares present no analogous difficulties in valuation. On any given day, their commercial value may be determined by turning to the financial pages of a newspaper. Obviously, with respect to mutual funds, there are "investment virtues" and the prospects of capital gains or dividends. But that is true of any corporate security. Nonetheless, shareholders in mutual funds are singled out by the Regulation and their holdings valued at an unrealistic replacement cost—which includes "brokers' commissions"—while other shareholdings are valued without regard to such commissions.

The unrealistic nature of this difference in treatment may be demonstrated by comparing the treatment of shares in load funds, such as the decedent's, with shares in no-load funds. Obviously, even if it could be argued that there are relevant differences between mutual fund shares generally and corporate stock, there are no dif-

ferences in terms of "investment virtues" or related interests between no-load and load fund shares. Indeed, as the terms imply, the only real distinction between the two is that one imposes an initial sales charge and the other does not.[11] Nonetheless, under the Regulation, a share in a no-load fund is valued at its net asset value while a share in a load fund is valued at net asset value plus sales charge. To further illustrate, consider a decedent who had purchased one share in each of two no-load mutual funds, at $100 per share. The decedent died before either appreciated, but after one of the funds had changed to a load fund. Although both shares are still worth $100, and could be redeemed for only that amount, the Regulation would require that one be valued at $100 and the other at $100 plus the new load charge. A regulation that results in such differing treatment of identical property should be supported by something more than a transparent analogy to life insurance.

We recognize that normally "Treasury regulations must be sustained unless unreasonable and plainly inconsistent with the revenue statutes." *Commissioner* v. *South Texas Lumber Co.*, 333 U. S. 496, 501 (1948). But even if the Regulation contested here is not, on its face, technically inconsistent with § 2031 of the Internal Revenue Code, it is manifestly inconsistent with the most elementary provisions of the Investment Company Act of 1940 and operates without regard for the market in mutual fund shares that the Act created and regulates. Cf. *L. E. Shunk Latex Products, Inc.* v. *Commissioner*, 18 T. C. 940 (1952). Congress surely could not have intended § 2031 to be interpreted in such a manner. The Regulation also imposes an unreasonable and unrealistic measure of value. We agree with Judge Tannenwald, who stated at the very outset of the dispute over Regula-

---

[11] See 1966 SEC Report, pp. 51-59.

tion § 20.2031-8 (b), that "it does not follow that, because [the Commissioner] has a choice of alternatives, his choice should be sustained where the alternative chosen is unrealistic. In such a situation the regulations embodying that choice should be held to be unreasonable." *Estate of Wells* v. *Commissioner*, *supra*, 50 T. C., at 878 (dissenting opinion).

The judgment of the Court of Appeals is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 71-1665

United States, Petitioner, *v.* Douglas B. Cartwright, as Executor of the Estate of Ethel B. Bennett.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 7, 1973]

MR. JUSTICE STEWART, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, dissenting.

This case presents a narrow issue of law regarding the valuation of certain assets—shares in an open-end investment company or "mutual fund"—for purposes of the Federal Estate Tax. The case turns upon a single question of law: whether or not § 20.2031-8 (b) of the Treasury Regulations, which provides a specific method for valuing such shares, represents a reasonable implementation of the legislation enacted by Congress.

On December 4, 1964, Mrs. Ethel Bennett died testate leaving, among other property, several thousand shares in three separate mutual funds. Each of the funds in question is managed by a firm known as Investors Diversified Services, Inc., and all are subject to regulation by the Securities and Exchange Commission under the Investment Company Act of 1940. In his tax return for the estate, the respondent, Mrs. Bennett's executor, valued these shares at their so-called "net asset value," that is, the amount at which the estate is entitled, as a matter of law, to have the shares redeemed by the issuer. The net asset value of a mutual fund share is calculated daily by the issuing company, and is equivalent to the fractional value per share of the fund's total net assets on that day. In addition to serving as a gauge for the redemption value of fund shares already issued, net

asset value is also employed by the issuing companies in determining the price at which they will offer new shares in the fund to the public on any given day. In general, such shares are sold to the public at their net asset value plus a sales charge or "load." The load is a varying percentage of the value of the shares sold, and fluctuates in accordance with the size of the purchase. In the case of Mrs. Bennett's shares, the maximum allowable sales load at the time of her death ranged between 7 and 8%, and the minimum was 1%.

Upon receipt of respondent's return, the Commissioner, acting in accordance with Treasury Regulation § 20.2031-8 (b),* assessed a deficiency, contending that the value of Mrs. Bennett's shares for Federal Estate Tax purposes was their public offering price on the date of her death, that is, the price which a member of the public would have had to pay to acquire similar shares from the issuer. This price would, of course, encompass not only the net asset value of the shares, but also the applicable sales load. Such a method of valuation for mutual fund shares is expressly prescribed by the Treasury Regulation noted above. Thus, the sole question before us is whether that regulation constitutes a reasonable exercise by the Commissioner of his statutory power to prescribe "all needful rules" for the proper enforcement of the tax laws, see 26 U. S. C. § 7805, or whether the regulation is so inherently unreasonable and inconsistent with the statute as to be invalid. *United States* v. *Correll*, 389 U. S. 299; *Bingler* v. *Johnson*, 394 U. S. 741. Upon the facts pre-

*The text of the regulation, insofar as relevant here, reads as follows: "The fair market value of a share in an open-end investment company [commonly known as a "mutual fund"] is the public offering price of a share, adjusted for any reduction in price available to the public in acquiring the number of shares being valued. . . ." There is a companion Gift Tax Regulation of identical import. See 26 CFR § 25.2512-6 (b).

sented by this case, I cannot say that the Commissioner's regulation is invalid, and I therefore dissent from the decision of the Court.

At the outset, it may be well to note the basic general rule with respect to valuation that prevails under our Estate Tax laws. This rule is embodied in Treasury Regulation § 20.2031-1 (b), and provides that the value of property includible in a decedent's estate shall be the fair market value of such property at the date of the decedent's death. "The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." 26 CFR § 20-2031-1 (b).

The difficulty in applying this rule to mutual fund shares—a difficulty which, no doubt, led the Commissioner to promulgate Regulation 20.2031-8 (b)—is that such shares *once issued* are not subject to disposition in a market of "willing buyers" and "willing sellers." Indeed, as both the District Court and the Court of Appeals noted, the only practical means of disposing of mutual fund shares once acquired is redemption, and redemption cannot be deemed a sale of the sort described in the general rule (26 CFR § 20.2031-1 (b)), since the party purchasing (the issuing company) is under an absolute obligation to redeem the shares when tendered, and the party selling has no practical alternative, if he wishes to liquidate his holdings, other than to offer them to the issuing company for redemption.

This being the case, the Commissioner was faced with the problem of establishing a method of valuing the shares most nearly equal to their inherent worth. In doing so, he chose not to treat their redemption value as dispositive of this question. In promulgating his regulation, he might rationally have considered that "on demand" redemption at net asset value is but one of many rights incident to the ownership of mutual fund shares.

For example, in the case of Mrs. Bennett's shares, her estate had not only the right to redeem them "on demand," but also to retain them; and if it had done so it would have possessed not only the normal dividend and capital gains rights associated with most investments, but also the right to have such dividends and capital gains as accrued applied toward the purchase of additional shares at a price *below* that which a member of the general public would have had to pay for such shares. In addition, under the investment contracts involved here, Mrs. Bennett's estate would have had the right to exchange her shares in any one of the three mutual funds involved for those of either or both of the other funds managed by Investors Diversified Services, Inc.—without paying the usual sales charge or load.

The Commissioner has determined that the proper method of valuing all the rights, both redemptive and otherwise, incident to the ownership of mutual fund shares is to determine what a member of the general public, acting under no constraints, would have had to pay for those rights if purchased on the open market. And, as noted earlier, although no such market exists for mutual fund shares *once issued* to an investor, a perfectly normal market of willing buyers and sellers does exist with respect to such shares prior to their issuance. Thus, the Commissioner took the price at which the shares would have sold on this market as fairly reflective of their inherent worth. I cannot say that this method of valuation adopted by the Commissioner, and embodied in Regulation 20.2031-8 (b), is so unreasonable and inconsistent with the statute as to render it invalid.

The respondent's claim that the regulation is invalid is grounded upon two principal arguments. First, he says, the estate is being taxed on an amount in excess of what it can, as a practical matter, realize from the disposition of the mutual fund shares. But this is equally true

of many other assets subject to taxation under our Estate Tax laws. For example, real property passing into an estate is taxed upon its full fair market value, despite the fact that as a practical matter the estate must usually pay some percentage of that sum in brokerage fees if it wishes to dispose of the property and receive cash in its stead. This attack upon the regulation thus amounts to no less than an attack upon the whole system of valuation embodied in the Treasury Regulations on Estate Tax, based as it is upon fair value in an open market. I am not ready to hold that this long established and long accepted system is basically invalid.

The respondent's second argument is that the regulation places a higher valuation on mutual fund shares than is placed upon registered common stock shares and other similarly traded securities. This argument assumes that the redemption or net asset value of a mutual fund share is identical to the fair market value of a traded security, and, by a parity of reasoning, that the sales charge or load associated with mutual fund purchases is equivalent to the commission that a stockbroker charges a purchaser of securities. Under this view, the Commissioner would be entitled to tax mutual fund shares passing into an estate only on their net asset value, since in the allegedly comparable situation of common stock shares no consideration may be given to brokers' commissions in arriving at an appropriate valuation for Estate Tax purposes. See 26 CFR § 20.2031-7 (b).

Although this argument has a certain superficial appeal, the analogy on which it relies is hardly an exact one. For an estate in disposing of marketable securities must pay a brokerage commission on their *sale*, and will thus realize less than the amount at which the securities have been valued, while an estate turning in mutual fund shares for redemption pays no commission or other surcharge whatever. Moreover, unlike traditional securities,

there is no open trading market for mutual fund shares once issued and in the hands of an investor. If such a market of willing buyers and sellers did exist, the Commissioner would doubtless be bound to treat mutual fund shares exactly like other securities. But where no market for an asset exists, there simply is no market price to provide a readily identifiable standard for valuation. Under these circumstances, it is the Commissioner's duty under the statute to establish criteria for determining the true worth of the totality of rights and benefits incident to ownership of the asset. This the Commission has done in Regulation 20.2031–8 (b) by providing that the value of a mutual fund share for Federal Estate Tax purposes shall be the price a member of the general public would have to pay to acquire such share. Such an approach to the valuation of assets not regularly traded in a market of willing buyers and sellers has already been sustained by this Court in a case closely akin to the case before us. See *Guggenheim* v. *Rasquin*, 312 U. S. 254 (1941).

Given the peculiar characteristics of mutual fund shares, it is arguable that the Commissioner might reasonably have adopted a method of valuation different from that which he has chosen. But that is a question that is not for us to decide. "[We] do not sit as a committee of revision to perfect the administration of the tax laws. Congress has delegated to the Commissioner, not the courts, the task of prescribing 'all needful rules and regulations for the enforcement' of the Internal Revenue Code. 26 U. S. C. § 7805 (a). In this area of limitless factual variation, 'it is the province of Congress and the Commissioner, not the courts, to make the appropriate adjustments.'" *United States* v. *Correll*, 389 U. S. 299, at 306. See *Bingler* v. *Johnson*, 394 U. S. 741, at 750.

I would reverse the judgment of the Court of Appeals and sustain the validity of the regulation.